**Contribution to the initiative of UN Special Rapporteur on torture**

28 April 2023

The Service for Foreign Policy Instruments (FPI) of the European Commission/EU welcomes this initiative of UN Special Rapporteur on torture to issue a call for input to inform the Special Rapporteur’s annual interim report to be presented to the General Assembly at its 78th Session in October 2023. FPI is the Service within the European Commission responsible for [Regulation (EU) 2019/125 of 16 January 2019](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0125), also referred to as the “Anti-Torture Regulation”, which has, since its adoption in 2005, served to help align EU trade to our values. The below contribution, while based on a number of official documents, should be considered as indicative input, given that within the timing available it has not been possible to ensure appropriate consultations.

As a contribution to the UN SR’s upcoming report, the FPI shares here below key points, essential information and lessons learned based on the implementation of the EU “Anti-Torture Regulation” (ATR).

Torture and other ill-treatment are among the most abhorrent violations of human rights and are prohibited under international law. The fight against torture and other ill-treatment is enshrined within the EU legal and political framework.

Despite States’ obligations under international law, acts of torture and other ill treatment continue to occur. In recent years, there has been a growing recognition by the international community of the need to regulate and restrict trade in certain law enforcement equipment to ensure that such goods are not employed for torture or other ill treatment.

There is still no global regulation of the trade in goods used to inflict those abuses. At global level, goods that serve no other purpose than to inflict pain are **being traded freely across borders undermining the international ban on torture and other ill-treatment.** Trade can play an important role in promoting human rights. Regulating the trade in goods that can be used for torture or the death penalty can strengthen global efforts towards the eradication of torture and other ill treatment.

Within the EU, the trade in goods which could be used for (a) capital punishment and (b) torture or other cruel, inhuman or degrading treatment or punishment is regulated by Regulation (EU) 2019/125

(‘the Regulation’). Adopted in 2005, **the Regulation is a reflection of the EU’s strong commitment to eradicating torture and the death penalty**. The EU Anti-Torture Regulation has helped close a major gap in human rights-based trade controls. It introduced unprecedented, binding trade restrictions on a range of goods often absent from military, dual-use, or other strategic export control lists.

It constituted the world’s first binding instrument specifically addressing the issue and it has played a role as a source of inspiration for work in this area by other countries and organisations.

**The Regulation’s objective** is to prevent capital punishment, on the one hand, and torture and other cruel, inhuman, or degrading treatment or punishment in third countries, on the other. It distinguishes goods according to:

* whether they are inherently abusive and should not be traded at all (Annex II), or
* whether they can have legitimate uses, such as law enforcement equipment (Annex III) as well as certain pharmaceutical chemicals (Annex IV), in which case trade in these goods is subject to certain restrictions.

To that end, the Regulation introduces **restrictions on trade** with non-EU countries. The Regulation, in particular:

1. prohibits imports, exports, and transit into, from or through the EU of goods (listed in Annex II) that have no practical use other than for the purposes of capital punishment or torture. The provision of any technical assistance related to such goods, specifically including training in their use, is also prohibited. In addition, the advertising of such goods on the internet, TV, radio, or at trade fairs is prohibited;
2. subjects goods (listed in Annex III) that could be used for such purposes but that may also have other legitimate uses (law enforcement) to a prior export authorisation, granted on a case-by-case basis; such authorisation is also required for supplying technical assistance or brokering services related to this category of goods. Annex III does not include: (a) firearms controlled by Regulation (EU) No 258/2012[[1]](#footnote-1); (b) dual-use items controlled by Regulation (EC) No 428/2009[[2]](#footnote-2); (c) goods controlled in accordance with Common Position 2008/944/CFSP[[3]](#footnote-3);
3. regulates the trade in goods – chemicals or pharmaceutical substances (Annex IV) – that could be used for capital punishment (e.g. products which could be used to execute human beings by lethal injection).

The Regulation includes detailed **lists of goods** referred to under (i) above with the following headings:

* goods and their components designed for the execution of human beings;
* goods which are not suitable for use by law enforcement authorities to restrain human beings;
* portable devices, as well as certain types of whips, which are not suitable for use by law enforcement authorities for the purpose of riot control or self-protection.

Goods in category (ii) currently fall under the following headings:

* goods designed for restraining human beings;
* weapons and devices designed for the purpose of riot control or self-protection;
* weapons and equipment disseminating incapacitating or irritating chemical substances for the purpose of riot control or self-protection and certain related substances.

Goods in category (iii) include in particular medicines which are particularly prone to being used in lethal injections.

The Regulation is binding in its entirety and directly applicable in all Member States. The competent authorities in the Member States are responsible for its implementation. Member States have the responsibility to decide, on a case-by-case basis, whether to grant an authorisation to export or dismiss an application for the regulated goods listed in Annex III and IV to the Regulation.

In order to prevent circumvention, the Regulation requires the competent authorities in the Member States to notify all other Member State authorities and the Commission if they are refusing to issue an authorisation or are annulling an existing authorisation. Consequently, any EU Member State considering authorising a transaction ‘essentially identical’ to one rejected by a Member State in the 3 years following the rejection is to consult the Member State having decided on the rejection. If an authorisation is granted nonetheless, the authorising Member State must provide a detailed explanation of its reasoning to the Commission and all Member States. When assessing an application, the authorities are to take into account considerations about intended end-use and the risk of diversion for illegitimate purposes.

Member States ‘shall not grant an authorisation when there are reasonable grounds to believe that the goods listed in Annex III might be used for torture or other cruel, inhuman or degrading treatment or punishment, including judicial corporal punishment, by a law enforcement authority or any natural or legal person, or used for capital punishment in a third country’.

The Regulation lists the following **sources of information** to guide the authorities’ decisions:

* available international court judgements;
* findings of the competent bodies of the UN, the Council of Europe and the EU;
* reports of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment, and the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment.

Other information that the authorities may use when taking decisions include:

* available national court judgements;
* reports by civil society organisations; and
* information on restrictions on exports of goods listed in Annexes II and III applied by the country of destination.

The same criteria apply when deciding on applications related to the supply of brokering services or technical assistance. The competent authorities in the Member States are also requested to register in a Commission database all data concerning refusals of applications for an authorisation to export. The database identifies the relevant EU competent authority, final destination, item concerned, description of the item, and the name of the consignee as well as of the end user.

The ATR Regulation includes also **reporting requirements.**

The Regulation requires that EU Member States prepare a public, annual activity report, providing information on the number of applications received, on the goods and countries concerned by these applications, and on the decisions taken on these applications. The European Commission furthermore issues annually a report based on data/information gathered from the competent authorities in the EU Member States.

In terms of the scope, the Regulation currently covers a broad range of goods related to capital punishment and torture. The Regulation furthermore includes provisions facilitating the **regular review and amendment of lists of prohibited and regulated goods** to respond to changes in the international security market where technological and market developments are occurring frequently and take account also of changes in the nature of use, and misuse, of law enforcement equipment.

1. REGULATION (EU) No 258/2012 of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition, OJ L 94, 30.3.2012, p. 1. [↑](#footnote-ref-1)
2. Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, OJ L 134, 29.5.2009, p.1. [↑](#footnote-ref-2)
3. Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment (CFSP) (2020/C 85/01), OJ, C 85-1, 13.3.2020. [↑](#footnote-ref-3)